

Appeal from a decision of the Colorado State Office declaring unpatented mining claims abandoned and void. C MC 138262, C MC 138263.

Reversed.

1. Evidence: Generally--Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

Evidence that a mining claimant possesses a return receipt card or certified mail receipt indicating there was a timely filing of a document with BLM serves to rebut the presumption of nonfiling which is customarily applied where BLM's records indicate a required filing has not occurred, absent a showing by BLM that the claimant filed any other document on that date. Although the nature of the document received by BLM is not described on the receipt or card, the existence of this proof indicates it is more probable than not that the required document was received by BLM.

APPEARANCES: Sydney Green, pro se, Richmond Hill, New York.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Sydney Green appeals from a June 23, 1987, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring unpatented mining claims C MC 138262 and C MC 138263 abandoned and void for failure to file with BLM, on or before December 30, 1985, and 1986, evidence of assessment work performed thereon or notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA). 43 U.S.C. | 1744 (1982). On appeal, appellant asserts that BLM has acknowledged receipt of the 1986 proof of assessment form. The record reflects that such a document was in fact received by BLM on December 11, 1986, within the statutory filing period.

With respect to the 1985 affidavit of performance of assessment work, appellant contends that the document was mailed on December 13, 1985, and received by BLM on December 17, 1985, within the filing period, as indicated by certified mail receipt (Item No. P 091 526 348). In support of his contention, appellant has submitted a copy of the proof of labor form which indicates a local recording date of August 30, 1985. Appellant has also submitted copies of certified mail receipts for years 1981, 1985, 1986, and 1987, and a letter from the U.S. Postal Service indicating that Postal Service records had been reviewed concerning the 1985 certified mail receipt, and showed the receipt as received. Finally, appellant has submitted a copy of the 1985 BLM Form 3830-2, which he avers was mailed with his 1985 proof of assessment.

BLM's file, however, does not contain a copy of the 1985 Form 3830-2, nor the document locally recorded by appellant on August 30, 1985. BLM therefore has concluded that the filing requirements of FLPMA were not met, as the file does not contain any record received by BLM for 1985 showing proof of assessment work or notice of intention to hold the claim. Appellant contends that his proof of assessment affidavit was mailed and received, and subsequently lost or misplaced by BLM, and that his mining claims should therefore not be declared abandoned and void.

Section 314 of FLPMA, and implementing regulations at 43 CFR 3833.2-1, require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office before December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the claim, regardless of the claimant's intent to hold the claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 471 U.S. 84 (1985). Filing or recording the required documents with the county or local recording district does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985).

As Congress mandated that failure to file the proper documents within the prescribed time limits will, in and of itself, cause the claim to be lost, this Board has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from statutory consequences. United States v. Locke, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As a general rule, where BLM's records do not contain evidence that one of the two documents has been filed within the prescribed filing period, the claims will be properly declared abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, *supra*.

Where a claimant submits proof by certified mail receipt that a document was in fact received by BLM within the prescribed time period, however, and there is no evidence that the claimant filed any other document with BLM on that date, this Board has previously held the presumption of nonfiling to be rebutted. Richard A. Willers, 101 IBLA 106 (1988); Elizabeth D. Anne, 66 IBLA 126 (1982). In Richard A. Willers, we stated:

Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This presumption of regularity is not overcome by an uncorroborated statement that the document was submitted to BLM or by evidence that the claimant timely filed a notice of intention to hold with the county or other local recording office. John R. Wellborn, 87 IBLA 20 (1985). The presumption is, however, overcome by evidence which establishes a fact so that reasonable minds can draw but one inference. John Walter Starks, 55 IBLA 266 (1981), appeal dismissed, J. Walter Starks v. Watt, Civ. No. C-81-0711 (C.D. Utah Mar. 2, 1982); Falstaff Brewing Corp. v. Thompson, 101 F.2d 301 (8th Cir.), cert. denied, 307 U.S. 631 (1939).

Id. at 107-08.

Appellant has supplied a copy of a certified mail receipt indicating that the Colorado State Office received documents from him on December 17, 1985. BLM has not established that appellant had other business with BLM that could have occasioned the December 17 receipt. While the copy of the receipt that appellant alleges was mailed in 1986 is not stamped or signed with a date that is clearly visible so as to enable us to unequivocally establish that it was received in 1986, 1/ the two receipt copies bear a receiving signature that is unquestionably identical. Both receipts are addressed to "U.S. Dept. of the Interior, Bureau of Land Management, Colorado State Office, 1037 20th St., Denver, Colorado 80202." While appellant has not conclusively established that his December 13, 1985, mailing to BLM contained the 1985 proof of assessment affidavit, we find that the evidence establishes that it is more probable than not that the mailing received by BLM on December 17, 1985, contained the required section 314(a) filing. As we stated in Richard A. Willers, supra at 108, "Since BLM has not [explained] the significance of the receipt card and the mail receipt, we find that [appellant] has established, by a preponderance of the evidence of record before us that the [proof of assessment work] was timely filed."

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1/ The copy of the return receipt card submitted with the statement of reasons (SOR), which appellant avers was signed by a BLM employee on Dec. 11, 1986, bears a legible "December 11," but both the dated signature of BLM's employee and the U.S. Postal Service stamp do not clearly indicate a visible year, "1986." Appellant has submitted copies of certified mail receipts for additional years in order to establish that he "usually mailed his affidavit of assessment work in December" (SOR at 7). While this information is not probative of whether he timely filed his 1985 affidavit, similar signatures on the 1985 and 1986 receipts would tend to buttress appellant's assertion that the affidavit was received. As BLM has stamped a copy of appellant's 1986 affidavit of assessment work as received on Dec. 11, 1986, the copy of the receipt appellant has submitted with his SOR is probably the 1986 receipt. While prior holdings of this Board do not indicate that further corroboration of a return receipt card is necessary, appellant's endeavors to provide additional proof have not been overlooked.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is reversed.

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Franklin D. Arness  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge